

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

JOSEPH A. WASKO,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 1:05-CV-431-TS
)	
JAMES A. HERMAN, <i>et al.</i> ,)	
)	
Defendants.)	

OPINION AND ORDER

Joseph A. Wasko, a *pro se* prisoner, submitted a complaint pursuant to 42 U.S.C. § 1983. That complaint, which did not otherwise contain a cause number, was used to open this lawsuit. Mr. Wasko had previously filed another lawsuit which had been assigned the cause number 1:05-CV-280. The allegations in these two lawsuits both assert claims for denial of medical care at the Allen County Jail after he was booked on June 29, 2005. In that prior lawsuit, counsel was appointed on November 29, 2005 for the limited purpose of filing an amended complaint and conducting whatever incidental discovery was the necessary predicate thereto.

It is unclear whether Mr. Wasko intended the complaint in this case to open a second lawsuit. Because simultaneously bringing the same claims against the same defendants is malicious, the court will not infer that this was Mr. Wasko's intent. Alternatively, Mr. Wasko may have been attempting to file an amended complaint in the prior case without the assistance of counsel. Because this complaint is not captioned as an amended complaint and because it is not otherwise evident that he intended to file this complaint in that case without the assistance of his appointed counsel, the court will not transfer this complaint to that case.

Rather, the court will dismiss this case as inadvertently opened and waive the filing fee. By so doing, Mr. Wasko will only be obligated to pay for one lawsuit. Additionally, he may consult with counsel and decide how to proceed with his claims in that first case.

For the foregoing reasons, the court:

- (1) DISMISSES this case WITHOUT PREJUDICE;
- (2) WAIVES the filing fee; and
- (3) DIRECTS the clerk to forward a copy of this order to all counsel of record in 1:05-CV-280.

SO ORDERED on February 24, 2006.

/s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT